

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Babu & Others Vs. State of Rajasthan
(D.B. Criminal Appeal No.1654/2002)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 22-11-2002 in Sessions Case No.214/2001 (61/2001) passed by Shri P.D. Gupta, RHJS, Additional Sessions Judge (Fast Track) Hindaun City.

Date of Judgment:

May 18, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Biri Singh Sinsinwar] for the appellants.
Mr. Kamendra Sihag]
Mr. Harendra Singh]

Mr. M.L.Goyal, Public Prosecutor for the State.

Mr. Anurag Sharma] for the complainant.
Mr. Mukesh Pal]

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Babu, Pooran, Radhey @ Radhey Shyam and Narsi @ Narsi Ram, the appellants herein, were put to trial before learned Additional Sessions Judge (Fast Track) Hindaun City, who vide judgment dated November 22, 2002 convicted and sentenced them as under:-

U/s.302/34 IPC:

Each to suffer imprisonment for life and fine of Rs.500/-, in default to further suffer rigorous imprisonment for three months.

U/s.323/34 IPC:

Each to suffer rigorous imprisonment for six months.

The substantive sentences were ordered to run concurrently.

2. It is the prosecution case that on February 21, 2001 informant Mahendra Singh submitted a written report (Ex.P-3) at Police Station Todabhim stating therein that on the said day around 11 AM while Prahlad was coming with some food articles from Ajeej Salimpur he was way-led near Tube-well by Radhey, Narsi, Ramavtar, Babu and Pooran, who were armed with lathis and Dharias. Radhey, Narsi and Babu inflicted lathi blows on the head of Prahalad, as a result of which he fell down Ramavtar, Pooran, Sabooti and Kapoor also caused injuries on the person of Prahlad. Prahlad was removed to the hospital where he was declared dead. On that report a case under sections 147, 148, 149, 323, 341 and 302 IPC was registered and investigation commenced. Necessary memos were drawn, statements of witnesses were recorded and after completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Hindaun City. Charges under sections 323/34 and 302/34 IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 14 witnesses. In the explanation under Sec.313 Cr.P.C., the appellants claimed innocence and stated that since they have lodged cross case, therefore they have been implicated falsely. One witness in support of their defence was examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. We have heard learned counsel for the appellants, learned counsel for the complainant and learned Public Prosecutor and with their assistance scanned the material on record.

4. Death of Prahlad was undeniably homicidal in nature. As per Post Mortem Report (Ex.P-8) following ante mortem injuries were found on the dead body:-

1. Diffuse swelling of 15cm x 5cm on right parietal occipital region of head. This swelling extend upto mid parietal region in this swelling also seen depression in right parietal region size of depressed area is 4 x 3 cm two lacerated wound present. The size of wound as follows:

(a) Lacerated wound of 4cm x 1cm x bone deep on parietal region new mid line of head on examination of head bleeding is positive.

(b) Lacerated wound of 3.5 cm x 1.5cm x bone deep on right parietal region 5cm lateral to wound A.

On dissection of the skull shows fracture- multiple fracture of right parietal bone size fracture bone is 4cm x 2.5cm fragments of the clotted blood present on brain matter.

2. Red black bruise present all over the right eye bow & eye lid & adjoining part of forehead.

3. Diffuse present all over the left eye brow, eye lid adjoining part of forehead.

4. Abrasion of 2cm x 1cm on left shoulder joint region.

5. Swelling of 6cm x 3cm present on abdomen both side to mid line below the umblicus on dissection no hematoma present below that injury.

In the opinion of Dr. Ram Lal Meena (Pw.9) the cause of death was head injury leading to fracture.

5. We have also noticed the injuries sustained by Smt.Saroopi (Pw.7), Vijendra Singh (Pw.10) as well as the injuries received by the appellants Babu Lal, Pooran, Narsi, Radhey Shyam, Shri Kishan and Dropati. Details of injuries are as under:-

Smt. Saroopi (Pw.7) vide injury report (Ex.P-9) received following

injuries:-

1. Deep abrasion of 1.5cm x .5cm on wrist joint right forearm.
2. Swelling of 5cm x 3cm on left forearm

Vijendra Singh (Pw.10) vide injury report (Ex.P-10) received following injuries:-

1. Brownish red bruise with swelling of 12cm x 4cm on left arm lower 2/3 part antromedial aspect tenderness
2. A branded bruise of 7cm x 2.5cm on right forearm lower part.

Appellant Babu Lal vide injury report (Ex.D-7A) received following injuries:-

1. Bruise 4cm x 3cm on middle of dorsum aspect of Rt. forearm.
2. Bruise with tenderness 5cm x 4cm in size on Rt. scapula

Appellant Pooran vide injury report (Ex.D-8) received following injuries:-

1. Bruise with tenderness 5cm x 3cm middle of lt. forearm
2. Bruise with tenderness 5cm x 4cm on dorsum of Lt. hand at Metacorpul joint.
3. Bruise 4cm x 2½ cm on lat. aspect of Lt. upper arm.
4. Bruise with tenderness 5cm x 4cm on Lt. shoulder joint.

Appellant Narsi vide injury report (Ex.D-9A) received one abrasion of 6cm x 4cm on front Rt.upper chest.

Appellant Radhey Shyam vide injury report (Ex.D-10A) received following injuries:-

1. Bruise with tenderness 4cm x 3cm on thumb of Lt. hand at Metacarpal joint.
2. Bruise with tenderness 5cm x 4cm on Rt. shoulder
3. Bruise with swelling 3cm x 2cm on Rt. side of occipital protuberance.
4. Bruise with swelling 3½ x 2cm on middle of Rt. parietal prominence.

Shri Kishan vide injury report (Ex.D-11A) received following injuries:-

1. Incised wound with clotted blood 5cm x 1cm x ¾ cm on parietal occipital region of scalp at the middle
2. Incised wound with clotted blood 2½cm x ½ cm x skin deep transversely at middle of forehead.

Dropati vide injury report (Ex.D-12A) received following injuries:-

1. Incised wound with bleeding 4cm x 1cm x bony deep vertically on frontal parietal region of scalp at middle
2. Bruise with tenderness 5cm x 3½ cm on Rt. shoulder.

6. Injured Saroopi (Pw.7) in her deposition stated that on the fateful day on hearing hue and cry when she reached to the place of incident she saw her husband surrounded by Radhey, Narsi, Babu, Pooran, Ramotar, Sabuti and Kapur. Radhey, Narsi and Babu and other accused inflicted injuries on the person of her husband as a result of which he fell down. He was removed to the hospital where he died. Testimony of Saroopi gets corroboration from the evidence of Vijendra Singh (Pw.10).

7. In support of the defence version the appellants examined Dr. Hri Singh Bhandari (Dw.1) who had seen the injuries of Babu Lal, Pooran, Narsi, Radhey Shyam, Shri Kishan and Dropati and drew injury reports

Ex.D-7A, Ex.D-8A, Ex.D-9A, Ex.D-10A, Ex.D-11A and Ex.D-12A. A perusal of Ex.D-5 shows that cross case was registered on the report of Shri Kishan against Prahlad, Bheemraj, Abhay, Mahendra, Dan Singh, Vijendra, Keshav, Saroopi, Jal Singh, Piro and Battu who were the members of complainant party.

8. Fact situation emerges from the material on record may be summarized as under:-

- (i) There was a dispute regarding between the appellants and the complainant party regarding the path way.
- (ii) Something which has not been completely unravelled might have sparked off the incident.
- (iii) On the date of incident a fight ensued and the deceased died in the course of sudden and free fight.
- (iv) The deceased's party was also armed with weapons.
- (v) Cross cases were registered between the parties.

9. Having closely scrutinised the testimony of prosecution witnesses we notice that complainant party and accused party had a dispute in regard to path way and both the parties freely fought all of a sudden and accused appellants suffered injuries on vital parts of the body, but the prosecution failed to give any explanation of such injuries. This fact situation gives rise to the inference that the prosecution is guilty of suppressing the genesis and the origin of the occurrence and thus not presented the true version.

10. Their Lordships of Supreme Court in Subramani Vs. State of

T.N. in regard to non explanation of injuries sustained by the accused indicated as under:-

“The appellants suffered injuries on vital parts of the body, even though simple but the prosecution failed to give any explanation for such injuries. The prosecution feigned ignorance about the injuries suffered by the appellants. It is not possible to accept the submission that the injuries being simple, the prosecution was not obliged to give any explanation for the same. Having regard to the facts of the case the omission on the part of the prosecution to explain the injuries on the person of the accused may give rise to the inference that the prosecution is guilty of suppressing the genesis and the origin of the occurrence and had thus not presented the true version.”

11. In Vajrapu Sambayya Naidu Vs. State of A.P. (supra) the Apex Court held that where the injuries sustained by the accused were not explained by the prosecution it probalilise the case of defence that the prosecution party was the aggressor.

12. On analysing the evidence adduced at the trial, we find that on the date of incident free fight ensued and the complainant party was also armed with sharp edged weapons. The injured witness Saroopi (Pw.7) attributed the head injuries of deceased to Babu, Radhey and Narsi but she has not attributed any injury to Pooran. The injuries sustained by the deceased in the course of sudden and free fight resulted in his death. In the facts and circumstances of the case it could not be said that appellants Babu, Radhey and Narsi acted in cruel or unusual manner and the case against these appellants clearly fell within Exception 4 of Section 300 IPC. These appellants however were rightly convicted under section 323/34 IPC for causing injuries to other witnesses. Since free fight ensued and no injury has been attributed to Pooran, in the facts and circumstances of the case the

possibility that Pooran was over implicated cannot be ruled out and he is entitled to benefit of doubt.

13. For these reasons, we dispose of instant appeal in the following terms:-

(i) We allow the appeal of appellant Pooran and set aside his conviction and sentence under sections 302/34 and 323/34 IPC. We acquit him of the said charges. Appellant Pooran is on bail, he need not surrender and his bail bonds stand discharged.

(ii) We partly allow the appeal of appellants Babu, Radhey @ Radhey Shyam and Narsi @ Narsi Ram and instead of 302/34 we convict each of them under section 304 part II read with 34 IPC to suffer rigorous imprisonment for five years. We however confirm their conviction and sentence under section 323/34 IPC. Appellants Babu and Narsi @ Narsi Ram are on bail, they shall be taken in custody forthwith and their bail bonds stand cancelled. Appellant Radhey @ Radhey Shyam, who has already served out the sentence awarded to him, shall be set at liberty forthwith, if he is not required to be detained in any other case.

(iii) The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J.

(Shiv Kumar Sharma)J.

